

AMENDED IN ASSEMBLY MAY 28, 2010

AMENDED IN ASSEMBLY APRIL 13, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1822

Introduced by Assembly Member Swanson

February 11, 2010

An act to amend Sections 4600.5, 4601, 4601.3, 4601.4, 4603.1, 4605, 4606, and 4612 of, and to add Sections 4600.1 and 4601.35 to, the Business and Professions Code, relating to massage therapy, and declaring the urgency thereof, to take effect immediately. An act to amend Sections 4600.5 and 4612 of, and to add Section 4612.5 to, the Business and Professions Code, relating to massage therapy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1822, as amended, Swanson. Massage therapy.

Existing law, until January 1, 2016, provides for the voluntary certification of massage practitioners and massage therapists by a nonprofit Massage Therapy Organization, as defined and governed by a board of directors, and imposes certain duties on that organization. Existing law, until January 1, 2016, requires an applicant for certification to be 18 years of age or older, to meet specified educational criteria, to provide specified information to the organization, to provide fingerprints for submission by the organization to the Department of Justice for state and federal criminal background checks, and to pay the fees required by the organization. Existing law requires the Department of Justice to conduct a criminal background check on every applicant and to provide to the organization fitness determinations and certain other information

regarding an applicant. Existing law, until January 1, 2016, allows the organization to take certain disciplinary action against certificate holders and requires the organization to take certain action with regard to suspending or revoking a certificate if the certificate holder has been arrested for, and charged with, specified sex-related crimes. Existing law makes it an unfair business practice for a person to state, advertise, or represent that he or she is certified or licensed by a governmental agency as a massage therapist or practitioner, or to make other false representations, as specified. Existing law prohibits a city, county, or city and county from enacting an ordinance that requires a certificate holder to obtain any other license, permit, or other authorization to engage in the practice of massage. Notwithstanding that prohibition, existing law authorizes a city, county, or city and county to adopt and enforce any local ordinance governing zoning, business licensing, and reasonable health and safety requirements for massage establishments or businesses. Existing law also exempts from certain local regulations sole proprietorships, as defined, and massage establishments or businesses that only employ persons who are certified.

This bill would, until January 1, 2016, require any person who administers massage for compensation to be either certified by the nonprofit Massage Therapy Organization or certified, registered, or licensed by a city, county, or city and county. The bill would also authorize a city, county, or city and county to require any person who administers massage or who owns a massage establishment or business to hold a business license or massage establishment permit or both. The bill would add 2 members to the board of directors of the organization *Massage Therapy Organization* who would be selected by specified peace officer associations. *The bill would also clarify that a city, county, or city and county is authorized to require any person who administers massage for compensation, or who owns a massage establishment or business, to also hold a business license or massage establishment permit or both.*

This bill, at the election of the governing body of a city, county, or city and county by resolution and by concurrence of the head of the local law enforcement agency in that jurisdiction, would also transfer specified duties from the Massage Therapy Organization to the local law enforcement agency. Upon that election, the bill would require an applicant for certification by the organization to provide his or her fingerprints to the local law enforcement agency in the city, county, or city and county in which the applicant will be administering massage

~~for submission to the Department of Justice for the requisite state and federal criminal background checks. Upon that election, the bill would require the Department of Justice to provide to the local law enforcement agency the fitness determination regarding the applicant, and would require the local law enforcement agency to conduct a local investigation related to the fitness of the applicant. Upon that election, the bill would require the Department of Justice and local law enforcement agencies to charge a reasonable fee sufficient to cover those costs. The bill would require the organization to establish a standardized form for statewide use for purposes of the fingerprinting requirements.~~

~~Upon that election, this bill would require local law enforcement agencies to approve or disapprove applicants for certification by the organization based upon his or her fitness to practice massage therapy, as specified, and would prohibit the organization from providing certification upon disapproval. The bill would allow an applicant to appeal a denial of certification, and would provide a specified procedure for that appeal. The bill would make it an unfair business practice for a person to state, advertise, or represent that he or she is certified by a governmental entity or the Massage Therapy Organization unless that representation is true. The bill would make other conforming changes, including to those provisions that exempted from certain local regulations sole proprietorships and massage establishments or businesses that only employ persons who are certified.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

~~Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes-no. State-mandated local program: no.~~

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 4600.5 of the Business and Professions*
- 2 *Code is amended to read:*
- 3 4600.5. (a) A Massage Therapy Organization, as defined in
- 4 subdivision (e) of Section 4600, shall be created and shall have
- 5 the responsibilities and duties set forth in this chapter. The
- 6 organization may take any reasonable actions to carry out the
- 7 responsibilities and duties set forth in this chapter, including, but
- 8 not limited to, hiring staff and entering into contracts.
- 9 (b) (1) The organization shall be governed by a board of
- 10 directors made up of two representatives selected by each

1 professional society, association, or other entity, whose
2 membership is comprised of massage therapists and that chooses
3 to participate in the organization. To qualify, a professional society,
4 association, or other entity shall have a dues-paying membership
5 in California of at least 1,000 individuals for the last three years,
6 and shall have bylaws that require its members to comply with a
7 code of ethics. The board of directors shall also include each of
8 the following persons:

9 (A) One member selected by each statewide association of
10 private postsecondary schools incorporated on or before January
11 1, 2010, whose member schools have together had at least 1,000
12 graduates in each of the previous three years from massage therapy
13 programs meeting the approval standards set forth in subdivision
14 (a) of Section 4600, except from those qualifying associations that
15 choose not to exercise this right of selection.

16 (B) One member selected by the League of California Cities,
17 unless that entity chooses not to exercise this right of selection.

18 (C) One member selected by the California State Association
19 of Counties, unless that entity chooses not to exercise this right of
20 selection.

21 (D) One member selected by the Director of Consumer Affairs,
22 unless that entity chooses not to exercise this right of selection.

23 (E) One member appointed by the California Community
24 College Chancellor's Office, unless that entity chooses not to
25 exercise this right of selection. The person appointed, if any, shall
26 not be part of any massage therapy certificate or degree program.

27 *(F) One member selected by the California Police Chiefs*
28 *Association, unless that entity chooses not to exercise this right of*
29 *selection.*

30 *(G) One member selected by the California State Sheriffs'*
31 *Association, unless that entity chooses not to exercise this right of*
32 *selection.*

33 The organization's bylaws shall establish a process for appointing
34 other professional directors as determined by the board.

35 (2) The initial board of directors shall establish the organization,
36 initiate the request for tax-exempt status from the Internal Revenue
37 Service, and solicit input from the massage community concerning
38 the operations of the organization. The initial board of directors,
39 in its discretion, may immediately undertake to issue the certificates
40 authorized by this chapter after adopting the necessary bylaws or

1 other rules, or may establish by adoption of bylaws the permanent
2 governing structure prior to issuing certificates.

3 (c) The board of directors shall establish fees reasonably related
4 to the cost of providing services and carrying out its ongoing
5 responsibilities and duties. Initial and renewal fees shall be
6 established by the board of directors annually.

7 (d) The meetings of the organization shall be subject to the rules
8 of the Bagley-Keene Open ~~Meetings~~ Meeting Act (Article 9
9 (commencing with Section 11120) of Chapter 1 of Part 1 of
10 Division 3 of Title 2 of the Government Code).

11 *SEC. 2. Section 4612 of the Business and Professions Code is*
12 *amended to read:*

13 4612. (a) (1) The holder of a certificate issued pursuant to
14 this chapter shall have the right to practice massage, consistent
15 with this chapter and the qualifications established by his or her
16 certification, in any city, county, or city and county in this state
17 and shall not be required to obtain any other license, permit, or
18 other authorization, except as provided in this section *or Section*
19 *4612.5*, to engage in that practice.

20 (2) Notwithstanding any other provision of law, a city, county,
21 or city and county shall not enact an ordinance that requires a
22 license, permit, or other authorization to practice massage by an
23 individual who is certified pursuant to this chapter and who is
24 practicing consistent with the qualifications established by his or
25 her certification, *except as provided in Section 4612.5*. No
26 provision of any ordinance enacted by a city, county, or city and
27 county that is in effect before the effective date of this chapter,
28 and that requires a license, permit, or other authorization to practice
29 massage, may be enforced against an individual who is certified
30 pursuant to this chapter, *except as provided in Section 4612.5*.

31 (3) Except as provided in subdivision (b), nothing in this section
32 shall be interpreted to prevent a city, county, or city and county
33 from adopting or enforcing any local ordinance governing zoning,
34 business licensing, and reasonable health and safety requirements
35 for massage establishments or businesses. Subdivision (b) shall
36 not apply to any massage establishment or business that employs
37 or uses persons to provide massage services who are not certified
38 pursuant to this chapter.

39 (b) (1) This subdivision shall apply only to massage
40 establishments or businesses that are sole proprietorships, where

1 the sole proprietor is certified pursuant to this chapter, and to
2 massage establishments or businesses that employ or use only
3 persons certified pursuant to this chapter to provide massage
4 services. For purposes of this subdivision, a sole proprietorship is
5 a business where the owner is the only person employed by that
6 business to provide massage services.

7 (2) (A) Any massage establishment or business described in
8 paragraph (1) shall maintain on its premises evidence for review
9 by local authorities that demonstrates that all persons providing
10 massage services are certified.

11 (B) Nothing in this section shall preclude a city, county, or city
12 and county from including in a local ordinance a provision that
13 requires a business described in paragraph (1) to file copies or
14 provide other evidence of the certificates held by the persons who
15 are providing massage services at the business *or from requiring*
16 *compliance with Section 4612.5.*

17 (3) A city, county, or city and county may charge a massage
18 business or establishment a business licensing fee sufficient to
19 cover the costs of the business licensing activities established by
20 a local ordinance described in this section.

21 (4) Nothing in this section shall prohibit a city, county, or city
22 and county from adopting land use and zoning requirements
23 applicable to massage establishments or businesses, provided that
24 these requirements shall be no different than the requirements that
25 are uniformly applied to other professional or personal services
26 businesses.

27 (5) Local building code or physical facility requirements
28 applicable to massage establishments or businesses shall not require
29 additional restroom, shower, or other facilities that are not
30 uniformly applicable to other professional or personal service
31 businesses, nor shall building or facility requirements be adopted
32 that (A) require unlocked doors when there is no staff available to
33 assure security for clients and massage staff who are behind closed
34 doors, or (B) require windows that provide a view into massage
35 rooms that interfere with the privacy of clients of the massage
36 business.

37 (6) A city, county, or city and county may adopt reasonable
38 health and safety requirements with respect to massage
39 establishments or businesses, including, but not limited to,
40 requirements for cleanliness of massage rooms, towels and linens,

1 and reasonable attire and personal hygiene requirements for persons
2 providing massage services, provided that nothing in this paragraph
3 shall be interpreted to authorize adoption of local ordinances that
4 impose additional qualifications, such as medical examinations,
5 background checks, or other criteria, upon any person certified
6 pursuant to this chapter.

7 (7) Nothing in this section shall preclude a city, county, or city
8 and county from doing any of the following:

9 (A) Requiring an applicant for a business license to operate a
10 massage business or establishment to fill out an application that
11 requests the applicant to provide relevant information.

12 (B) Making reasonable investigations into the information so
13 provided.

14 (C) Denying or restricting a business license if the applicant
15 has provided materially false information.

16 (c) An owner or operator of a massage business or establishment
17 subject to subdivision (b) shall be responsible for the conduct of
18 all employees or independent contractors working on the premises
19 of the business. Nothing in this section shall preclude a local
20 ordinance from authorizing suspension, revocation, or other
21 restriction of a license or permit issued to a massage establishment
22 or business if violations of this chapter, or of the local ordinance,
23 occur on the business premises.

24 (d) Nothing in this section shall preclude a city, county, or city
25 and county from adopting a local ordinance that is applicable to
26 massage businesses or establishments described in paragraph (1)
27 of subdivision (b) and that does either of the following:

28 (1) Provides that duly authorized officials of the city, county,
29 or city and county have the right to conduct reasonable inspections,
30 during regular business hours, to ensure compliance with this
31 chapter, the local ordinance, or other applicable fire and health
32 and safety requirements.

33 (2) Requires an owner or operator to notify the city, county, or
34 city and county of any intention to rename, change management,
35 or convey the business to another person.

36 *SEC. 3. Section 4612.5 is added to the Business and Professions*
37 *Code, to read:*

38 *4612.5. Notwithstanding any other provision of this chapter,*
39 *any city, county, or city and county may require any person who*
40 *administers massage for compensation, or who owns a massage*

1 *establishment or business, to also hold a business license or a*
2 *massage establishment permit or both.*

3 ~~SECTION 1. It is the intent of the Legislature to clarify existing~~
4 ~~law with regard to the authority of a city, county, or city and county~~
5 ~~to enforce local regulations in connection with massage~~
6 ~~establishments and businesses. It is further the intent of the~~
7 ~~Legislature to provide greater authority to local law enforcement~~
8 ~~agencies in connection with the certification of persons who~~
9 ~~administer massage for compensation.~~

10 ~~SEC. 2. Section 4600.1 is added to the Business and Professions~~
11 ~~Code, to read:~~

12 ~~4600.1. (a) Any person who administers massage for~~
13 ~~compensation shall hold at least one of the following:~~

14 ~~(1) A certificate issued pursuant to this chapter.~~

15 ~~(2) (A) A certificate, registration, or license to administer~~
16 ~~massage issued by the city, county, or city and county in which~~
17 ~~the person will be administering massage.~~

18 ~~(B) Notwithstanding subparagraph (A), any person who~~
19 ~~administers massage for compensation and who practices in a city,~~
20 ~~county, or city and county that does not administer a certification,~~
21 ~~registration, or licensing scheme pursuant to subparagraph (A)~~
22 ~~shall be required, at a minimum, to be certified by the organization~~
23 ~~pursuant to paragraph (1).~~

24 ~~(b) Notwithstanding subdivision (a) or any other provision of~~
25 ~~this chapter, any city, county, or city and county may require any~~
26 ~~person who administers massage for compensation, or who owns~~
27 ~~a massage establishment or business, to also hold a business license~~
28 ~~or a massage establishment permit or both.~~

29 ~~(c) Local law enforcement may enforce any local ordinance that~~
30 ~~requires a certificate, registration, license, or permit as provided~~
31 ~~in this section.~~

32 ~~(d) It shall be unlawful for any person who administers massage~~
33 ~~for compensation to fail to comply with the requirements specified~~
34 ~~in subdivision (a), or to fail to hold a business license or a massage~~
35 ~~establishment permit in a jurisdiction that requires an additional~~
36 ~~license or permit pursuant to subdivision (b).~~

37 ~~SEC. 3. Section 4600.5 of the Business and Professions Code~~
38 ~~is amended to read:~~

39 ~~4600.5. (a) A Massage Therapy Organization, as defined in~~
40 ~~subdivision (c) of Section 4600, shall be created and shall have~~

1 the responsibilities and duties set forth in this chapter, subject to
2 the limitations imposed under Section 4601.35, if applicable. The
3 organization may take any reasonable actions to carry out the
4 responsibilities and duties set forth in this chapter, including, but
5 not limited to, hiring staff and entering into contracts.

6 ~~(b) (1) The organization shall be governed by a board of~~
7 ~~directors made up of two representatives selected by each~~
8 ~~professional society, association, or other entity, whose~~
9 ~~membership is comprised of massage therapists and that chooses~~
10 ~~to participate in the organization. To qualify, a professional society,~~
11 ~~association, or other entity shall have a dues-paying membership~~
12 ~~in California of at least 1,000 individuals for the last three years,~~
13 ~~and shall have bylaws that require its members to comply with a~~
14 ~~code of ethics. The board of directors shall also include each of~~
15 ~~the following persons:~~

16 ~~(A) One member selected by each statewide association of~~
17 ~~private postsecondary schools incorporated on or before January~~
18 ~~1, 2010, whose member schools have together had at least 1,000~~
19 ~~graduates in each of the previous three years from massage therapy~~
20 ~~programs meeting the approval standards set forth in subdivision~~
21 ~~(a) of Section 4600, except from those qualifying associations that~~
22 ~~choose not to exercise this right of selection.~~

23 ~~(B) One member selected by the League of California Cities,~~
24 ~~unless that entity chooses not to exercise this right of selection.~~

25 ~~(C) One member selected by the California State Association~~
26 ~~of Counties, unless that entity chooses not to exercise this right of~~
27 ~~selection.~~

28 ~~(D) One member selected by the Director of Consumer Affairs,~~
29 ~~unless that entity chooses not to exercise this right of selection.~~

30 ~~(E) One member appointed by the California Community~~
31 ~~College Chancellor's Office, unless that entity chooses not to~~
32 ~~exercise this right of selection. The person appointed, if any, shall~~
33 ~~not be part of any massage therapy certificate or degree program.~~

34 ~~(F) One member selected by the California Police Chiefs~~
35 ~~Association, unless that entity chooses not to exercise this right of~~
36 ~~selection.~~

37 ~~(G) One member selected by the California State Sheriffs~~
38 ~~Association, unless that entity chooses not to exercise this right of~~
39 ~~selection.~~

1 The organization's bylaws shall establish a process for appointing
2 other professional directors as determined by the board.

3 ~~(2) The initial board of directors shall establish the organization,~~
4 ~~initiate the request for tax-exempt status from the Internal Revenue~~
5 ~~Service, and solicit input from the massage community concerning~~
6 ~~the operations of the organization. The initial board of directors,~~
7 ~~in its discretion, may immediately undertake to issue the certificates~~
8 ~~authorized by this chapter after adopting the necessary bylaws or~~
9 ~~other rules, or may establish by adoption of bylaws the permanent~~
10 ~~governing structure prior to issuing certificates.~~

11 ~~(c) The board of directors shall establish fees reasonably related~~
12 ~~to the cost of providing services and carrying out its ongoing~~
13 ~~responsibilities and duties. Initial and renewal fees shall be~~
14 ~~established by the board of directors annually.~~

15 ~~(d) The meetings of the organization shall be subject to the rules~~
16 ~~of the Bagley-Keene Open Meeting Act (Article 9 (commencing~~
17 ~~with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title~~
18 ~~2 of the Government Code).~~

19 ~~SEC. 4. Section 4601 of the Business and Professions Code is~~
20 ~~amended to read:~~

21 ~~4601. (a) The organization shall issue a certificate under this~~
22 ~~chapter to an applicant who satisfies the requirements of this~~
23 ~~chapter, subject to the limitations imposed under Section 4601.35,~~
24 ~~if applicable.~~

25 ~~(b) (1) In order to obtain certification as a massage practitioner,~~
26 ~~an applicant shall submit a written application and provide the~~
27 ~~organization with satisfactory evidence that he or she meets all of~~
28 ~~the following requirements:~~

29 ~~(A) The applicant is 18 years of age or older.~~

30 ~~(B) The applicant has successfully completed, at a single~~
31 ~~approved school, curricula in massage and related subjects totaling~~
32 ~~a minimum of 250 hours that incorporates appropriate school~~
33 ~~assessment of student knowledge and skills. Included in the hours~~
34 ~~shall be instruction addressing anatomy and physiology,~~
35 ~~contraindications, health and hygiene, and business and ethics,~~
36 ~~with at least 100 hours of the required minimum 250 hours devoted~~
37 ~~to these curriculum areas.~~

38 ~~(C) All fees required by the organization have been paid.~~

39 ~~(2) New certificates shall not be issued pursuant to this~~
40 ~~subdivision after December 31, 2015.~~

1 ~~(e) In order to obtain certification as a massage therapist, an~~
2 ~~applicant shall submit a written application and provide the~~
3 ~~organization with satisfactory evidence that he or she meets all of~~
4 ~~the following requirements:~~

5 ~~(1) The applicant is 18 years of age or older.~~

6 ~~(2) The applicant satisfies at least one of the following~~
7 ~~requirements:~~

8 ~~(A) He or she has successfully completed the curricula in~~
9 ~~massage and related subjects totaling a minimum of 500 hours. Of~~
10 ~~this 500 hours, a minimum of 250 hours shall be from approved~~
11 ~~schools. The remaining 250 hours required may be secured either~~
12 ~~from approved or registered schools, or from continuing education~~
13 ~~providers approved by, or registered with, the organization or the~~
14 ~~Department of Consumer Affairs.~~

15 ~~(B) The applicant has passed a massage and bodywork~~
16 ~~competency assessment examination that meets generally~~
17 ~~recognized psychometric principles and standards, and that is~~
18 ~~approved by the board. The successful completion of this~~
19 ~~examination may have been accomplished before the date the~~
20 ~~organization is authorized by this chapter to begin issuing~~
21 ~~certificates.~~

22 ~~(3) All fees required by the organization have been paid.~~

23 ~~(d) The organization shall issue a certificate to an applicant who~~
24 ~~meets the other qualifications of this chapter and holds a current~~
25 ~~and valid registration, certification, or license from any other state~~
26 ~~whose licensure requirements meet or exceed those defined within~~
27 ~~this chapter. The organization shall have discretion to give credit~~
28 ~~for comparable academic work completed by an applicant in a~~
29 ~~program outside of California.~~

30 ~~(e) An applicant applying for a massage therapist or massage~~
31 ~~practitioner certificate shall file with the organization a written~~
32 ~~application provided by the organization, showing to the~~
33 ~~satisfaction of the organization that he or she meets all of the~~
34 ~~requirements of this chapter.~~

35 ~~(f) Any certification issued under this chapter shall be subject~~
36 ~~to renewal every two years in a manner prescribed by the~~
37 ~~organization, and shall expire unless renewed in that manner. The~~
38 ~~organization may provide for the late renewal of a certificate.~~

39 ~~(g) (1) The organization shall have the responsibility to~~
40 ~~determine that the school or schools from which an applicant has~~

1 obtained the education required by this chapter meet the
2 requirements of this chapter. If the organization has any reason to
3 question whether or not the applicant received the education that
4 is required by this chapter from the school or schools that the
5 applicant is claiming, the organization shall investigate the facts
6 to determine that the applicant received the required education
7 prior to issuing a certificate.

8 (2) For purposes of paragraph (1) and any other provision of
9 this chapter for which the organization is authorized to receive
10 factual information as a condition of taking any action, the
11 organization shall have the authority to conduct oral interviews of
12 the applicant and others or to make any investigation deemed
13 necessary to establish that the information received is accurate and
14 satisfies any criteria established by this chapter.

15 SEC. 5. Section 4601.3 of the Business and Professions Code
16 is amended to read:

17 4601.3. (a) Prior to issuing a certificate to the applicant, the
18 organization shall require the applicant to submit fingerprint images
19 in a form consistent with the requirements of this section. The
20 organization shall submit the fingerprint images and related
21 information to the Department of Justice for the purpose of
22 obtaining information as to the existence and nature of a record of
23 state and federal level convictions and of state and federal level
24 arrests for which the Department of Justice establishes that the
25 applicant was released on bail or on his or her own recognizance
26 pending trial. Requests for federal level criminal offender record
27 information received by the Department of Justice pursuant to this
28 section shall be forwarded to the Federal Bureau of Investigation
29 by the Department of Justice. The Department of Justice shall
30 review the information returned from the Federal Bureau of
31 Investigation, and shall compile and disseminate a fitness
32 determination regarding the applicant to the organization.

33 (b) The Department of Justice shall provide information to the
34 organization pursuant to Section 11105 of the Penal Code.

35 (c) The Department of Justice and the organization shall charge
36 a fee sufficient to cover the cost of processing the request for state
37 and federal level criminal offender record information.

38 (d) The organization shall request subsequent arrest notification
39 service from the Department of Justice, as provided under Section
40 11105.2 of the Penal Code, for all applicants for certification for

1 whom fingerprint images and related information are submitted
2 to conduct a search for state and federal level criminal offender
3 record information.

4 (e) If the governing body of a city, county, or city and county
5 elects, by resolution and with the concurrence of the head of the
6 local law enforcement agency in that jurisdiction, to be subject to
7 the requirements of Section 4601.35, this section shall not apply
8 with respect to the certification of applicants in that jurisdiction
9 and the organization shall instead comply with the process set forth
10 in Section 4601.35.

11 SEC. 6. Section 4601.35 is added to the Business and
12 Professions Code, to read:

13 4601.35. (a) (1) Notwithstanding Section 4601.3, if the
14 governing body of a city, county, or city and county elects, by
15 resolution and with the concurrence of the head of the local law
16 enforcement agency in that jurisdiction, to be subject to the
17 requirements of this section, this section shall govern the
18 certification process established under this chapter for applicants
19 in that jurisdiction.

20 (2) Prior to issuing a certificate to the applicant, the organization
21 shall require the applicant to submit to the local law enforcement
22 agency in the jurisdiction in which the applicant will be
23 administering massage, fingerprint images in a form consistent
24 with the requirements of this section. The local law enforcement
25 agency shall submit the fingerprint images and related information
26 to the Department of Justice for the purpose of obtaining
27 information as to the existence and nature of a record of state and
28 federal level convictions and of state and federal level arrests for
29 which the Department of Justice establishes that the applicant was
30 released on bail or on his or her own recognizance pending trial.
31 Requests for federal level criminal offender record information
32 received by the Department of Justice pursuant to this section shall
33 be forwarded to the Federal Bureau of Investigation by the
34 Department of Justice. The Department of Justice shall review the
35 information returned from the Federal Bureau of Investigation,
36 and shall compile and disseminate a fitness determination regarding
37 the applicant to the local law enforcement agency.

38 (b) The Department of Justice shall provide information to the
39 local law enforcement agency pursuant to Section 11105 of the
40 Penal Code.

1 ~~(e) The Department of Justice and the local law enforcement~~
2 ~~agency shall charge a reasonable fee sufficient to cover the cost~~
3 ~~of processing the request for state and federal level criminal~~
4 ~~offender record information and the cost of the local investigation~~
5 ~~conducted under subdivision (e).~~

6 ~~(d) The local law enforcement agency shall request subsequent~~
7 ~~arrest notification service from the Department of Justice, as~~
8 ~~provided under Section 11105.2 of the Penal Code, for all~~
9 ~~applicants for certification for whom fingerprint images and related~~
10 ~~information are submitted to conduct a search for state and federal~~
11 ~~level criminal offender record information.~~

12 ~~(e) In addition to the state and federal background checks~~
13 ~~conducted by the Department of Justice, the local law enforcement~~
14 ~~agency shall conduct a local investigation by compiling local arrest~~
15 ~~records.~~

16 ~~(f) (1) After conducting the background checks and~~
17 ~~investigation under this section, the local law enforcement agency~~
18 ~~shall assess the fitness of the applicant and make a determination~~
19 ~~as to whether a certificate shall be issued to the applicant, subject~~
20 ~~also to satisfactory qualification under Section 4601. If the local~~
21 ~~law enforcement agency approves the applicant for certification,~~
22 ~~the organization shall issue a certificate to the applicant, unless~~
23 ~~the organization determines there are other grounds for disapproval,~~
24 ~~as described in Section 4603. If the local law enforcement agency~~
25 ~~disapproves the applicant for certification, the organization shall~~
26 ~~not issue a certificate to that applicant, and the organization shall~~
27 ~~ensure compliance with the procedures specified in Section 4603.1.~~
28 ~~An applicant denied certification pursuant to this section may~~
29 ~~appeal that denial pursuant to the procedures specified in Section~~
30 ~~4603.1.~~

31 ~~(2) For purposes of paragraph (1), in assessing the fitness of the~~
32 ~~applicant, the local law enforcement agency shall only make a~~
33 ~~determination that the applicant is unfit if he or she has been~~
34 ~~convicted of a violation of Section 266h, 266i, 315, 316, or 318~~
35 ~~of, or subdivision (a) or (b) of Section 647 of, the Penal Code, or~~
36 ~~convicted of having committed a commercial sex act or human~~
37 ~~trafficking. The local law enforcement agency may not make that~~
38 ~~determination of fitness based upon any other factor.~~

39 ~~(g) As soon as practicable after enactment of the act adding this~~
40 ~~subdivision, the organization shall establish a standardized form~~

1 for statewide use that describes the fingerprinting requirements
2 that may be imposed under this section and what information shall
3 be submitted by an applicant to the local law enforcement agency;
4 which shall include, at a minimum, name, date of birth, social
5 security number, driver's license number, residence history,
6 employment history, criminal arrest, conviction, or abatement
7 history, two passport quality photographs, his or her live scan
8 fingerprints, the specified local law enforcement fee, and any other
9 information needed by the Department of Justice to conduct
10 criminal background checks. No local law enforcement agency
11 may require that an applicant use any other form when submitting
12 his or her fingerprints pursuant to paragraph (2) of subdivision (a);
13 unless the organization fails to comply with this subdivision.

14 (h) This section applies only to the certification process
15 established under this chapter and as set forth in paragraph (1) of
16 subdivision (a). This section does not affect any procedures
17 established by a city, county, or city and county pursuant to
18 subparagraph (A) of paragraph (2) of subdivision (a) or
19 subdivision (b) of Section 4600.1.

20 SEC. 7. Section 4601.4 of the Business and Professions Code
21 is amended to read:

22 4601.4. Organization directors, employees, or volunteer
23 individuals may undergo a background investigation process
24 pursuant to subdivision (p) of Section 11105 of the Penal Code,
25 at organizational expense.

26 SEC. 8. Section 4603.1 of the Business and Professions Code
27 is amended to read:

28 4603.1. (a) No certificate holder or certificate applicant may
29 be disciplined or denied a certificate pursuant to Section 4601.3,
30 4601.35, if applicable, or 4603 except according to procedures
31 satisfying the requirements of this section. A denial or discipline
32 not in accord with this section or subdivision (c) of Section 4602
33 shall be void and without effect.

34 (b) Any certificate applicant denial or certificate holder
35 discipline shall be done in good faith and in a fair and reasonable
36 manner. Any procedure that conforms to the requirements of
37 subdivision (c) is fair and reasonable, but a court may also find
38 other procedures to be fair and reasonable when the full
39 circumstances of the certificate denial or certificate holder
40 discipline are considered.

~~(e) A procedure is fair and reasonable when the procedures in subdivision (c) of Section 4602 are followed, or if all of the following apply:~~

~~(1) The provisions of the procedure have been set forth in the articles or bylaws and copies of those provisions are sent annually to all certificate holders.~~

~~(2) It provides the giving of 15 days prior notice of the certificate denial or certificate holder discipline and the reasons therefor.~~

~~(3) It provides an opportunity for the certificate applicant or certificate holder to be heard, orally or in writing, not less than five days before the effective date of the certificate denial or certificate holder discipline by a person or body authorized to decide that the proposed certificate denial or certificate holder discipline not take place.~~

~~(d) Any notice required under this section may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class or certified mail sent to the last address of the certificate applicant or certificate holder shown on the organization's records.~~

~~(e) Any action challenging a certificate denial or certificate holder discipline, including any claim alleging defective notice, shall be commenced within one year after the date of the certificate denial or certificate holder discipline. If the action is successful, the court may order any relief, including reinstatement, that it finds equitable under the circumstances.~~

~~(f) This section governs only the procedures for certificate denial or certificate holder discipline and not the substantive grounds therefor. A certificate denial or certificate holder discipline based upon substantive grounds that violates contractual or other rights of the member or is otherwise unlawful is not made valid by compliance with this section.~~

~~(g) A certificate applicant or certificate holder who is denied or disciplined shall be liable for any charges incurred, services or benefits actually rendered, dues, assessments, or fees incurred before the certificate denial or certificate holder discipline or arising from contract or otherwise.~~

~~SEC. 9. Section 4605 of the Business and Professions Code is amended to read:~~

~~4605. (a) It is an unfair business practice for any person to state or advertise or put out any sign or card or other device, or to~~

1 represent to the public through any print or electronic media, that
2 he or she is certified, registered, or licensed by a governmental
3 entity as a massage therapist or massage practitioner unless that
4 representation is true pursuant to paragraph (2) of subdivision (a)
5 of Section 4600.1.

6 (b) ~~It is an unfair business practice for any person to state or~~
7 ~~advertise or put out any sign or card or other device, or to represent~~
8 ~~to the public through any print or electronic media, that he or she~~
9 ~~is certified by the organization as a massage therapist or massage~~
10 ~~practitioner unless that representation is true pursuant to paragraph~~
11 ~~(1) of subdivision (a) of Section 4600.1.~~

12 SEC. 10. ~~Section 4606 of the Business and Professions Code~~
13 ~~is amended to read:~~

14 ~~4606. It is an unfair business practice for any person to hold~~
15 ~~oneself out or use the title of “certified massage therapist” or~~
16 ~~“certified massage practitioner” or any other term, such as~~
17 ~~“licensed,” “registered,” or “CMT,” that implies or suggests that~~
18 ~~the person is certified as a massage therapist or practitioner without~~
19 ~~meeting the requirements of Section 4600.1, 4601, or 4604.~~

20 SEC. 11. ~~Section 4612 of the Business and Professions Code~~
21 ~~is amended to read:~~

22 ~~4612. (a) (1) The holder of a certificate issued pursuant to~~
23 ~~this chapter shall have the right to practice massage, consistent~~
24 ~~with this chapter and the qualifications established by his or her~~
25 ~~certification, in any city, county, or city and county in this state~~
26 ~~and shall not be required to obtain any other license, permit, or~~
27 ~~other authorization, except as provided in this section or~~
28 ~~subdivision (b) of Section 4600.1, to engage in that practice.~~

29 ~~(2) Notwithstanding any other provision of law, a city, county,~~
30 ~~or city and county shall not enact an ordinance that requires a~~
31 ~~license, permit, or other authorization to practice massage by an~~
32 ~~individual who is certified pursuant to this chapter and who is~~
33 ~~practicing consistent with the qualifications established by his or~~
34 ~~her certification, except as provided in subdivision (b) of Section~~
35 ~~4600.1. No provision of any ordinance enacted by a city, county,~~
36 ~~or city and county that is in effect before the effective date of this~~
37 ~~chapter, and that requires a license, permit, or other authorization~~
38 ~~to practice massage, may be enforced against an individual who~~
39 ~~is certified pursuant to this chapter, except as provided in~~
40 ~~subdivisions (b) and (c) of Section 4600.1.~~

1 ~~(3) Nothing in this section shall be interpreted to prevent a city,~~
2 ~~county, or city and county from adopting or enforcing any local~~
3 ~~ordinance governing zoning, business licensing, and reasonable~~
4 ~~health and safety requirements for massage establishments or~~
5 ~~businesses.~~

6 ~~(b) (1) This subdivision shall apply to every massage~~
7 ~~establishment or business that provides massage services.~~

8 ~~(2) (A) Every massage establishment or business shall maintain~~
9 ~~on its premises evidence for review by local authorities that~~
10 ~~demonstrates that all persons providing massage services are~~
11 ~~certified or licensed.~~

12 ~~(B) Nothing in this section shall preclude a city, county, or city~~
13 ~~and county from including in a local ordinance a provision that~~
14 ~~requires a massage establishment or business to file copies or~~
15 ~~provide other evidence of the certificates or licenses held by the~~
16 ~~persons who are providing massage services at the massage~~
17 ~~establishment or business.~~

18 ~~(3) A city, county, or city and county may charge a massage~~
19 ~~establishment or business a business licensing fee sufficient to~~
20 ~~cover the costs of the business licensing activities established by~~
21 ~~a local ordinance described in this section.~~

22 ~~(4) Nothing in this section shall prohibit a city, county, or city~~
23 ~~and county from adopting land use and zoning requirements~~
24 ~~applicable to massage establishments or businesses.~~

25 ~~(5) A city, county, or city and county may adopt reasonable~~
26 ~~health and safety requirements with respect to massage~~
27 ~~establishments or businesses, including, but not limited to,~~
28 ~~requirements for cleanliness of massage rooms, towels and linens,~~
29 ~~and reasonable attire and personal hygiene requirements for persons~~
30 ~~providing massage services, provided that nothing in this paragraph~~
31 ~~shall be interpreted to authorize adoption of local ordinances that~~
32 ~~impose additional qualifications, such as medical examinations or~~
33 ~~other criteria upon any person certified pursuant to this chapter.~~

34 ~~(6) Nothing in this section shall preclude a city, county, or city~~
35 ~~and county from doing any of the following:~~

36 ~~(A) Requiring an applicant for a business license to operate a~~
37 ~~massage establishment or business to fill out an application that~~
38 ~~requests the applicant to provide relevant information.~~

39 ~~(B) Making reasonable investigations into the information so~~
40 ~~provided.~~

1 ~~(C) Denying or restricting a business license if the applicant~~
2 ~~has provided materially false information.~~

3 ~~(e) An owner or operator of a massage establishment or business~~
4 ~~shall be responsible for the conduct of all employees or independent~~
5 ~~contractors working on the premises of the business. Nothing in~~
6 ~~this section shall preclude a local ordinance from authorizing~~
7 ~~suspension, revocation, or other restriction of a license or permit~~
8 ~~issued to a massage establishment or business if violations of this~~
9 ~~chapter, or of the local ordinance, occur on the business premises.~~

10 ~~(d) Nothing in this section shall preclude a city, county, or city~~
11 ~~and county from adopting a local ordinance that is applicable to~~
12 ~~massage establishments or businesses and that does either of the~~
13 ~~following:~~

14 ~~(1) Provides that duly authorized officials of the city, county,~~
15 ~~or city and county have the right to conduct reasonable inspections,~~
16 ~~during regular business hours, to ensure compliance with this~~
17 ~~chapter, the local ordinance, or other applicable fire and health~~
18 ~~and safety requirements.~~

19 ~~(2) Requires an owner or operator to notify the city, county, or~~
20 ~~city and county of any intention to rename, change management,~~
21 ~~or convey the establishment or business to another person.~~

22 ~~SEC. 12. This act is an urgency statute necessary for the~~
23 ~~immediate preservation of the public peace, health, or safety within~~
24 ~~the meaning of Article IV of the Constitution and shall go into~~
25 ~~immediate effect. The facts constituting the necessity are:~~

26 ~~In order to ensure the public health and safety with regard to the~~
27 ~~practice of massage, it is necessary that this act take effect~~
28 ~~immediately.~~